



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking :
Regarding Policies, Procedures and : Rulemaking 06-03-004
Rules for California Solar Incentive, : (Filed March 2, 2006)
the Self-Generation Incentive Program :
and Other Distributed Generation Issues :

**UTC POWER
REPLY COMMENTS
ON
PROPOSED DECISION OF COMMISSIONER PEEVEY
OPINION DENYING PETITION BY FUELCELL ENERGY
TO MODIFY DECISION 04-12-045**

February 11, 2008

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I. Introduction

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”), UTC Power respectfully submits these reply comments in response to initial comments filed in connection with the Proposed Decision of Commissioner Peevey Denying the Petition by FuelCell Energy to Modify Decision 04-12-045. UTC Power appreciates the opportunity to provide its views on requested changes to the incentive caps in the Self Generation Incentive Program (“SGIP”).

The Proposed Decision identified the central issue before it as whether the Commission should deviate from prior decisions that created and retained a 1 MW cap on incentives to any one project.^{1[1]} In defining the issue, the Proposed Decision noted that if the Commission raised the incentive limit beyond 1 MW, as requested, it could allow a large portion of each utility’s SGIP budget to go towards a single project, or at most, a few large projects.^{2[2]} Ultimately, the Proposed Decision concluded the Commission should not deviate from the 1MW cap on incentives.^{3[3]} The Proposed Decision concisely and correctly describes the central issue and arrives at the proper conclusion that will preserve the SGIP’s ability to broadly distribute funds. Nothing in the Initial Comments provides a basis for any other conclusion. Accordingly, the Proposed Decision should be adopted as final.

^{1[1]} Proposed Decision at page 7.

^{2[2]} Proposed Decision at page 7.

^{3[3]} Proposed Decision at 8-9.

UTC Power encourages the Commission to adopt the Proposed Decision without material modification and generally limits these reply comments to: why the Commission should issue a final decision now and not accept revised evidence; the sensibility of allowing the new opportunities in AB 1613 to be implemented and utilized by large fuel cell projects; the inadequacy of the Petitioner's suggested mechanisms to concurrently increase the incentive cap *and* preserve SGIP funds for broad distribution; and, the importance of SGIP fund availability to continued fuel cell technology and price competition and market maturation.

II. The Commission Should Adopt the Proposed Decision Without Material Modification and Allow the Economic Opportunities Available Through AB 1613 to be Implemented and Utilized by Large Fuel Cell Projects Before Further Considering Potential Changes to the SGIP that Would Preclude Broad Distribution of Funds.

The Petitioner requests that the Commission reverse its Proposed Decision or refrain from acting on it and allow the Petitioner to file an Amended Petition for Modification, which the Petitioner previews in its Comments.^{4[4]} UTC Power respectfully suggests that the Commission proceed to a final decision at this time. First, given that the Commission will not consider an increase in the annual SGIP budget at this time^{5[5]}, continued examination of specific unit cost data for large fuel cell projects will not change the fact that raising the incentive cap for large projects will result in the SGIP funding one or a few large projects, contrary to the policy of broadly distributing SGIP funds.^{6[6]} Second, moving forward now with a final decision rather than undertaking further examination of new evidence will also bring certainty back to the market and to potential customers about SGIP fund availability in 2008.

Finally, and importantly, the Proposed Decision does not mean that large fuel cell installations cannot be developed.^{7[7]} First, projects up to 5MW are eligible for SGIP funding. Second, as the Proposed Decision observes, Assembly Bill 1613 provides opportunity for combined heat and power systems up to 20MW, including fuel cell projects, to benefit economically from the new law requiring utilities to purchase excess electricity from such projects.^{8[8]} To the extent large fuel cell installations need incremental economic support

^{4[4]} The Petitioner Comments at page 13 and Appendix C/Offer of Proof.

^{5[5]} Proposed Decision at page 9.

^{6[6]} Proposed Decision at page 7.

^{7[7]} Proposed Decision at page 10.

^{8[8]} Proposed Decision at page 10.

beyond that available through the SGIP, AB 1613 purposefully provides such opportunity to large projects. Accordingly, a sensible approach to preserve SGIP funds *and* enable larger projects to obtain additional economic support is to allow AB 1613 to be implemented and utilized by large fuel cell projects. At a minimum, the Commission should not consider raising SGIP incentive levels until customers have an opportunity to benefit from AB 1613, which will positively influence large projects' economic analysis. Thus, if large facilities like Corcoran State Prison for whom "... additional incentives beyond the one MW level could make the difference in its ability to go forward,"^{9[9]} a reasonable path forward is to maintain current SGIP incentive levels and allow large projects the opportunity to work with the benefits that will flow to them upon AB 1613's implementation.

III. The Proposed Mechanisms that Purport to Simultaneously Preserve the SGIP Budget and Lift the Cap on Incentive Levels For Large Fuel Cell Projects Are Not Effective.

The Petitioner also advocates further process on ways it contends would preserve the SGIP budget *and* provide incentives for large fuel cell projects. They include: limiting eligibility for incentives above 1 MW to renewable fuel cell or wind power projects; implementing a tiered incentive for renewable projects; and, approving the increase in the incentive cap as a 2 year pilot program, with extension beyond the end of 2009 subject to Commission evaluation of the impact of the pilot.^{10[10]}

Further process or hearings on the proposed "regulatory limits"^{11[11]} would not effectively preserve finite SGIP funds for broad distribution and concurrently fund large fuel cell projects. Specifically, lifting the incentive cap for large renewable fuel cell projects would still direct substantially all SGIP funds to few large projects. Graduating the incentive for large fuel cell projects would still result in substantial dedication of the SGIP budget to large fuel cell projects. In other words, as the Proposed Decision notes, the Petitioners request would limit some SGIP administrator's ability to fund no more than one project in any given year.^{12[12]} The Petitioner's graduated approach also looks for substantial dollar increases per project that would materially limit funding to perhaps a couple of projects in any given year. Finally, imposing a two-year period during which the incentive cap is lifted for large projects followed by an after-

^{9[9]} PG&E Initial Comments at page 3.

^{10[10]} The Petitioner Comments at page 8.

^{11[11]} The Petitioner Comments at page 5.

^{12[12]} Proposed Decision at pages 8-9.

the- fact evaluation of its impact on SGIP fund availability is simply inadequate. The review would occur only after SGIP funds are depleted by large projects and other fuel cell customers are adversely affected. The proposed mechanisms referred to as “regulatory limits”^{13[13]} cannot concurrently preserve funds for broad distribution and support large fuel cell projects.

IV. The Proposed Decision Accurately Assessed and Treated the Issues of Competition and Economies of Scale.

In response to the Proposed Decision’s observation that granting the Petition “could actually limit competition in the fuel cell industry by allowing one provider to lock-up virtually the entire incentive budget”, the Petitioner states that “...the PD is simply incorrect in presuming that large and small fuel cells are in direct competition with each other.”^{14[14]}

The Petitioner’s comment about competition in this context is off point. As the Proposed Decision notes, the issue of competition is that raising the incentive cap would result in a substantial portion of the SGIP budget being used by one or a few large fuel cell projects rather than being broadly disbursed to support many fuel cell projects. The resulting lack of SGIP funds for broad distribution would have the effect of impeding, rather than encouraging, competition in fuel cell technology and price and ultimately, market maturation.

With respect to economies of scale, the Petitioner stated that it supported its Petition with information regarding economies of scale associated with larger projects.^{15[15]} Large project size does not deliver economies of scale greater than a higher number of projects: the key to achieving economies of scale, which leads to price reductions for customers, is the overall number of fuel cells manufactured and sold. Continued broad distribution of SGIP funds is critical to achieving that end.

V. Conclusion

UTC Power respectfully requests the Commission adopt the Proposed Decision without material modification and appreciates consideration of our views.

^{13[13]} The Petitioner Comments at page 5.

^{14[14]} The Petitioner Comment at page 6.

^{15[15]} The Petitioner Comments at page 3

Dated: February 11, 2008

Respectfully Submitted,


A handwritten signature in black ink, appearing to read "Michael O. Brown", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "UTC POWER REPLY COMMENTS ON PROPOSED DECISION OF COMMISSIONER PEEVEY OPINION DENYING PETITION BY FUELCELL ENERGY TO MODIFY DECISION 04-12-045" on all known parties to R06-03-004 and parties to Rulemaking 04-03-017 by transmitting an email message with the document attached to each party named on the official service list. Parties who did not provide an email address were mailed a properly addressed copy via first class mail with postage prepaid.

Executed on this 11th day of February in the year 2008 in South Windsor, Connecticut



John A. Schuster
Counsel, UTC Power Corporation